



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

SEP 26 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5939 9071

Mr. Jacob S. Tawil, P.E., Commissioner
Department of Public Works
City of Middletown
16 James Street
Middletown, New York 10940-1587

Re: Order CWA-02-2013-3058
City of Middletown
SPDES Permit No. NY0026328

Dear Commissioner Tawil:

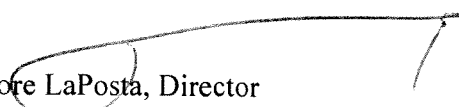
The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the City of Middletown, located at 16 James Street, Middletown, New York, is in violation of the Clean Water Act (33 U.S.C. §1251 *et seq.*) ("CWA" or "Act") for failure to fully comply with EPA's Request for Information, Docket No. CWA-IR-13-004, pursuant to Section 308 of the CWA. Specifically, the City of Middletown failed to provide a complete response to the Request for Information related to compliance with the General Pretreatment Regulations. Enclosed are two (2) originals of Order CWA-02-2013-3058 issued pursuant to Section 309 of the Act, which details the findings.

Please acknowledge receipt of this Order by signing one of the original Orders on the acknowledgement page and returning the acknowledgement page along with one of the original copies of the Order by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the facility to civil/criminal penalties pursuant to Section 309 of the Act and subject the facility to ineligibility for participation in work associated with Federal contracts, grants or loans.

In addition, Securities and Exchange Commission (SEC) Regulation S-K, Item 103 - Legal Proceedings (17 §CFR 229.103) requires registrants with the SEC (e.g., publicly-traded companies) to periodically disclose a broad array of environmental legal proceedings in statements filed with the Commission. In an effort to increase awareness of this duty, and encourage greater disclosure of environmental legal proceedings, we are enclosing a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings."

If you have any questions regarding this Order, please contact Mr. Douglas McKenna, Chief, Water Compliance Branch at (212) 637-4244.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, NYSDEC (w/enclosure)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2
290 Broadway
New York, New York 10007-1866

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IN THE MATTER OF
:
City of Middletown
:
Department of Public Works
:
16 James Street
:
Middletown, New York 10940-1587
:
SPDES Permit No. NY0026328
:
Proceeding pursuant to §309(a) of the
:
Clean Water Act, 33 U.S.C. §1319(a)
:
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ORDER

CWA-02-2013-3058

The following Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Clean Water Act, 33 U.S.C. §1251 et seq. ("CWA" or "Act"), which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

FINDINGS OF VIOLATION

1. City of Middletown (the "permittee" or "Respondent"), a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5), owns and operates the City of Middletown Sewage Treatment Plant ("Middletown STP" or the "Facility"). The Facility, located at 159 Dolson Avenue, New York, is a publicly owned treatment works ("POTW"). The Facility is a point source which discharges pollutants into the Wallkill River, a water of the United States, all within the respective definitions established in Section 502 of the Act, 33 U.S.C. §1362. The City of Middletown, therefore, is subject to the provisions of the Act, 33 U.S.C. §1251 et seq.
2. In accordance with the Act and its implementing regulations at 40 Code of Federal Regulations ("C.F.R.") §403.8(f), a POTW with a design flow greater than five million gallons per day ("MGD") and receiving from an industrial user ("IU") pollutants which pass through or interfere with the operation of the POTW, or are otherwise subject to pretreatment standards, is required to develop a pretreatment program that complies with the General Pretreatment Regulations at 40 C.F.R. Part 403.
3. The Middletown STP is a POTW with a design flow of 8.5 MGD and receives a discharge from at least one IU, Bell Flavors and Fragrances, which is subject to the pretreatment standards promulgated pursuant to Section 307(b) of the Act.

4. The City of Middletown does not have a pretreatment program established in accordance with the General Pretreatment Regulations at 40 C.F.R. §403.8(f) which regulations are promulgated pursuant to Section 307 of the Act.
5. On June 14, 2013, the EPA issued a Request for Information pursuant to Section 308(a) of the Act, 33 U.S.C. §1318(a), Docket No. CWA-IR-13-004, requiring the City of Middletown to submit information related to the requirements of the General Pretreatment Regulations. Specifically, the Request for Information included the following:
 - I. Name of each treatment plant operated under a SPDES permit within the jurisdictional boundaries and authority of the Middletown Department of Public Works ("DPW").
 - II. For each treatment plant listed in response to Item I, provide:
 - a. Location, SPDES permit number, effective and expiration dates of the permit;
 - b. Treatment plant wastewater flows, including both design and actual flows;
 - c. Level and type of treatment process(es) on site and method of sludge disposal;
 - d. Industrial contribution in MGD and percent industrial flow to plant;
 - e. Name of each facility which discharges non-domestic wastewater, either by pipe or hauler, to the plant;
 - f. Type of control mechanism, such as permit, available/in place for accepting non-domestic wastewater into the plant;
 - g. Legal authority available/in place for controlling non-domestic wastewater discharge into the plant;
 - h. Local limits available/in place for controlling non-domestic wastewater discharge into the plant;
 - i. Monitoring program such as sampling or inspection of facilities discharging to the plant;
 - j. Procedure available/in place to identify and locate potential source of non-domestic wastewater discharge.
 - III. For each of the facilities listed in response to Item II.e, provide:
 - a. Location, type of business and if available Standard Industrial Classification ("SIC") code;
 - b. Description of process of operations or manufacturing process on site;
 - c. Non-domestic wastewater in gallons per day accepted by the plant.
 - IV. List and describe instances of interference, upset or SPDES permit violations experienced at the treatment plant since January 1, 2010 and briefly describe those that are attributed to non-domestic discharges.
 - V. Provide a proposed plan, and estimated time frame and cost for Middletown DPW to develop a pretreatment program in accordance with 40 C.F.R. §403.8(f).
6. On July 19, 2013, the City of Middletown submitted a response to the Request for Information. The response did not provide all of the information required. Specifically, the City of Middletown failed to submit the following:

- a. A monitoring program, including sampling or inspection procedures, for facilities discharging to the plant;
 - b. A procedure available/in place to identify and locate potential sources of non-domestic wastewater discharge;
 - c. A proposed plan, and estimated time frame and cost, for the City of Middletown to develop a pretreatment program in accordance with 40 C.F.R. §403.8(f); and
 - d. Certification for the response.
7. A full response to the Request for Information is necessary to ensure compliance with the requirements set forth in the Act and its implementing regulations, in particular, the General Pretreatment Regulations at 40 C.F.R. Part 403.
 8. On the basis of the findings cited in the paragraphs above, the City of Middletown is in violation of the Section 308 of the Act, 33 U.S.C. §1318, and its implementing regulations.

ORDERED PROVISIONS

Based upon the foregoing and pursuant to the authority of Section 309(a)(3) of the Act, it is hereby ORDERED that:

1. Immediately upon receipt of the original copies of this Administrative Order (“AO” or “Order”), a responsible official of the City of Middletown shall complete and sign one of the original Orders on the acknowledgement page and return the acknowledgement page along with one of the originals of the Order by certified mail or its equivalent to the Chief, Water Compliance Branch, at the address listed below.
2. City of Middletown shall develop and submit to EPA for approval a complete Industrial Pretreatment Program (“IPP”) submission in accordance with 40 C.F.R. §§403.8(f) and 403.9(b). Specifically, the City of Middletown shall comply with the following requirements in accordance with the schedule set forth below:
 - A. By **December 1, 2013**, the City of Middletown shall submit an IPP inventory list of all non-domestic users, including current information on the source, nature and volume of the discharges. The submission shall include a list of specific users and criteria based on which the City of Middletown identifies the specific users that will require a control mechanism.
 - B. City of Middletown shall develop local discharge limits using site specific data in accordance with 40 C.F.R. §403.5, and shall comply with the schedule below:
 - (1) By **January 1, 2014**, the City of Middletown shall submit a preliminary report that will include:
 - i. a description of POTW processes, design criteria, and average/peak loadings;
 - ii. a summary of sampling data for local limit development;
 - iii. an analysis of pollutants of concern (“POCs”) with an explanation for selection of the specific POCs; additional POCs may be identified from additional sampling;

- iv. a summary of the criteria used for the calculation of headworks based on the City of Middletown's SPDES permit, New York State water quality standards, sludge standards, any applicable air regulations, and worker health & safety considerations;
- v. a presentation of the documented historical loadings from the POTW's industrial users discharging to the collection system including the hauled wastewater users;
- vi. a presentation of the loadings from uncontrollable (domestic) sources;
- vii. a strategy for the POTW's use of data that is below detection limits;
- viii. a summary of the inhibition thresholds for the POTW; inhibition occurs when pollutant levels in a POTW's wastewater or sludge cause operational problems for biological treatment processes involving secondary or tertiary wastewater treatment and alter the POTW's ability to adequately remove BOD, TSS, and other pollutants.

(2) By **February 1, 2014**, the City of Middletown shall submit to EPA a draft comprehensive Headworks Analysis Report for local limits developed in accordance with 40 C.F.R. §403.5(c) and include:

- i. a summary of sampling data for local limit development;
- ii. a summary of the removal efficiencies for the POTW based on site-specific data and/or values from EPA's "Local Limits Development Guidance" (July 2004), including the following:
 - (a) in calculating removal efficiencies, site-specific data cannot be used unless a minimum of five (5) sample results are available;
 - (b) sample results cannot be used in the analysis if both influent and effluent values are below detection limits;
 - (c) for non-detectable effluent values to be used, the influent and effluent samples must have same detect limits;
 - (d) where site-specific values are not usable, the City of Middletown shall use removal efficiencies provided in the EPA's "Local Limits Development Guidance" (July 2004);
 - (e) where site-specific values cannot be used, and EPA's guidance manual does not provide values, the City of Middletown can use data from EPA's Risk Reduction Engineering Laboratory ("RREL") Treatability Database;
 - 1. if no sedimentation data is available in the database, the City of Middletown shall assume zero percent (0%) removal efficiency through primary treatment;
 - 2. City of Middletown shall assume that only removal efficiencies for values within the zero to one hundred (0 to 100) microgram per liter ($\mu\text{g/l}$) range are valid for toxics;
- iii. a calculation of the Maximum Allowable Headworks Loads (MAHLs) for POCs that will prevent pass-through and interference;
- iv. a calculation of the Maximum Allowable Industrial Loads (MAILs) for POCs that subtracts loadings from the MAHLs based on data uncertainty, area growth, and domestic loading; and

- (3) By **March 1, 2014**, the City of Middletown shall submit to EPA a final comprehensive Headworks Analysis Report for local limits developed in accordance with 40 C.F.R. §403.5(c) based on the draft report in Paragraph B.(2) and any resulting comments from EPA.
- C. By **February 1, 2014**, the City of Middletown shall submit to EPA a detailed description of its program structure and procedure for administering a program pertaining to control mechanism and compliance monitoring. In accordance with 40 C.F.R. §403.9(b)(1) and (2), the submission shall include:
- (1) A statement from the City Solicitor or City Official from the City of Middletown acting in a comparable capacity (or the attorney) that the POTW has authority adequate to carry out the programs described in 40 C.F.R. §403.8; and
- (2) A copy of any statutes, ordinances (including, but not limited to sewer use ordinances), regulations agreements, or other authorities relied upon by the POTW for its administration of the program.
- D. By **March 1, 2014**, the City of Middletown shall submit to EPA an Enforcement Response Plan ("ERP") with detailed procedure describing how the City of Middletown will investigate and respond to instance of industrial user noncompliance.
- E. By **March 1, 2014**, the City of Middletown shall submit a funding plan that shows adequate funding to support the program. The plan shall include an organization chart, estimated cost of the program, cost recovery method, funding levels and manpower to implement the program.
- F. By **May 1, 2014**, the City of Middletown shall submit an Industrial Pretreatment Program submission to its municipal legislative body for approval.
- G. By **June 16, 2014**, the City of Middletown shall submit to EPA a complete Industrial Pretreatment Program submission for approval.
- H. Submission of documents in accordance with each requirement above shall be due on the date specified regardless of whether or not comments or approval have been received from the EPA.
- I. No later than fourteen (14) calendar days following a date identified in the above schedule, the City of Middletown shall submit a report of progress and a written notice of compliance or noncompliance with the condition to the Chief, Water Compliance Branch at the address listed below. In the case of noncompliance, the notice shall include the cause of the noncompliance, any remedial actions taken, and the time it will take to complete the required action.

GENERAL PROVISIONS

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. §122.22, be sent by certified mail or its equivalent to:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, NY 10007-1866

Kate Anderson, Chief
Clean Water Regulatory Branch
Clean Water Division
U.S. Environmental Protection Agency - Region 2
290 Broadway - 24th floor
New York, NY 10007-1866

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer, regarding the Requested Information or Ordered Provisions, with the EPA representative, Mr. Douglas McKenna, Chief, Water Compliance Branch at the address above or at (212)-637-4244.
3. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§701-706.
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by the EPA to ensure swift compliance with the CWA. Issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
5. Notice is hereby given that failure to comply with the requirements of the CWA Section 308 Information Request may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if the Court determines that Respondent has failed to comply with the terms of the Information Request. Respondent may also be subject to administrative remedies for failing to comply with the Information Request as provided by Section 309 of the CWA.

6. Notice is hereby given that failure to comply with the requirements of the CWA Section 309(a)(3) Compliance Order may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. §1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if the Court determines that Respondent has violated the CWA as described above and failed to comply with the terms of the Compliance Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
7. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
8. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: SEPTEMBER 26, 2013

Signed: _____

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

City of Middletown
16 James Street
Middletown, New York 10940-1587

Respondent

Proceeding pursuant to §309(a) of the Clean Water
Act, 33 U.S.C. §1319(a)

ADMINISTRATIVE ORDER

CWA-02-2013-3058

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an officer of the City of Middletown,
with the title of, _____, do hereby acknowledge the receipt of copy of the
ADMINISTRATIVE ORDER, CWA-02-2013-3058.

DATE: _____

SIGNED: _____